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In the Supreme Court of the United States

OCTOBER TERM, 1963.

No. 729.

KEITH WILSON, *et al*
Petitioners,

vs.

WASHINGTON CONGREGATIONAL CHURCH,
Respondent.

RESPONDENT'S BRIEF

Opposing Petition for Writ of Certiorari to the Supreme Court of the State of Ohio.

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PRELIMINARY STATEMENT.

All forms of emphasis in this brief, unless otherwise noted, are ours.

Respondent, Washington Congregational Church, is located in one of Toledo, Ohio's residential suburbs. Petitioners are a minority faction of the members of respondent's congregation. Petitioners in this court do not include all plaintiffs-appellants in the Ohio courts. One such plaintiff-appellant, who is a noticeable absentee from petitioners, is Jane G. Swartzbaugh, wife of R. B. Swartzbaugh, counsel for petitioners.

PRIOR PROCEEDINGS.

Although not mentioned in the petition in this case, Mr. R. B. Swartzbaugh, counsel for petitioners, in January of 1963 filed a "Motion For Leave to File Brief as Amicus Curiae and Brief in Support of Petition for a Writ of Certiorari" in Case Number 705 on the October, 1962 docket of this court, entitled "First Congregational Church and Society of Burlington, Iowa, et al., Petitioners, against Evangelical and Reformed Church, et al., Respondents."

Said Case Number 705, and prior proceedings therein, are referred to in the petition herein and in the balance of this brief as the "Mayfair" case, as one of the petitioners in said Case No. 705 was Mayfair Congregational Church of Toledo, Ohio. Other petitioners included Mayfair's minister and a member of such church. Case No. 705 was a class action brought on behalf of such petitioners and *all* other Congregational Churches, ministers and members (including, of course, petitioners and respondent in this case).

The appendix to Mr. Swartzbaugh's motion and brief in the Mayfair Case No. 705 consisted of the Journal Entry of the trial court in *this* case and certain pleadings, or portions thereof, in *this* case (including portions not a part of the appendix to the petition herein, namely excerpts from the Answer and Motion for Summary Judgment of this Respondent, Washington Congregational Church. See pages 20-27 of appendix in Case No. 705).

Mr. Swartzbaugh's Motion for Leave to File Brief as *Amicus Curiae* was granted; and after consideration of that brief by this court, the Writ of Certiorari in the *Mayfair* case was denied on February 18, 1963 (9 L. ed. 2nd 723).

Also not mentioned in the petition herein as a part of the proceedings in the Ohio courts is the fact that plain-

tiffs-appellants filed a Motion for Rehearing in the Court of Appeals of Lucas County, Ohio, which Motion was overruled. (See Journal Entry, Appendix C, page 27 of petition.)

The first two paragraphs of such motion for rehearing demonstrated that plaintiffs-appellants believed the case had been decided on the merits as a question of law for the court, in view of the admissions in the pleadings, and without any reference to the question of *res judicata* or *collateral estoppel* or to any federal issue whatsoever. Thus, the first two paragraphs of plaintiffs-appellants' Motion for Rehearing in the Court of Appeals of Lucas County stated:

> "Now come the plaintiffs-appellants and move the Court for a rehearing and reargument of the appeal herein because it appears that the Court has erroneously found that there are no genuine issues as to any material fact, whereas the contrary can be demonstrated beyond reasonable legal argument and the Court has erroneously *construed the Ohio law* relating to the construction and interpretation of contracts.
>
> "Thus, it is our understanding that the Court concluded that the so-called Cadman and Mayfair cases were neither applicable as res judicata nor as collateral estoppel but that the reply had admitted that the 'steps' set forth in the Appendix to the Answer concerning the proceedings leading up to the merger vote had been taken and *that the construction and interpretation* of the Constitutions of the defendant and the United Church *was merely a matter of law for the Court*. The Court then of necessity must have concluded that the provisions of defendant's Constitution did not prevent a vote to change the denominational status of this church and that the defendant was entitled to summary judgment as a matter of law."

The petition herein further fails to state that the order granting this Respondent's Motion to Dismiss the Appeal to the Supreme Court of Ohio for the reason that no debatable constitutional question exists is officially reported at 175 Ohio St. 264 (1963). This order is referred to at page 2 of the petition herein and is set forth as Appendix A of page 19 of such petition.

NO QUESTIONS WERE PRESENTED FOR REVIEW BY THIS COURT.

Respondent denies that the record in this case presents the question stated in the petition or any federal question; denies that the constitutional provisions cited by petitioners are in anywise involved; and denies that this court has jurisdiction to review the judgment of the Supreme Court of Ohio.

This brief of respondent, insofar as practicable, will avoid any discussion of the merits of the controversy and be limited to pointing out to this court that:

(a) The question sought to be reviewed was not timely or properly raised or expressly passed on in the Ohio courts.

(b) The judgment below rests on adequate non-federal basis. (See plaintiffs-appellants' Motion for Rehearing in the Court of Appeals of Lucas County, Ohio, set forth above.)

(c) This case does not present a substantial federal question.

STATEMENT OF CASE.

This action was brought in May, 1961 in the Common Pleas Court of Lucas County, Ohio, by a dissenting minority of respondent's congregation. The action was to enjoin the carrying into effect of a vote by respondent's congregation to approve the constitution of the United Church of Christ and to become a part of, and in fellowship with, such denomination.

It was plaintiffs' contention that any fellowship with that denomination would restrict the autonomy of respondent church and be contrary to respondent's constitution, and was therefore improper as a "departure." Nothing has been done, or proposed to change the constitution of respondent, its name, or to change so much as the dotting of an "i" or the crossing of a "t" in respondent's articles, constitution or by-laws.

The frivolous and specious character of petitioners' claim that fellowship with the United Church of Christ destroys the autonomy of a local church is clearly demonstrated from a mere reading of the constitution of the United Church of Christ as Article IV, Section 21 thereof specifically states:

> "The autonomy of the local church is *inherent and modifiable only by its own action*. Nothing in this Constitution and the By-Laws of the United Church of Christ *shall destroy or limit* the right of each local church to continue to operate in the way customary to it; nor shall be construed as giving to the General Synod, or to any Conference or Association, *now or at any future time*, the power to abridge or impair *the autonomy of any local church* in the management of its own affairs, which affairs include, but are not limited to, the right to retain or adopt its own methods or organization, worship and education; to retain or secure its own *charter* and *name*; to adopt its *own*

constitution and by-laws; to formulate its own covenants and confessions of faith; to admit members in its own way and to provide for their discipline or dismissal; to call or dismiss its pastor or pastors by such procedure as it shall determine; to acquire, own, manage, and dispose of property and funds; to control its own benevolences; *and to withdraw* by its own decision from the United Church of Christ at any time without forfeiture of ownership or control of any real or personal property owned by it."

In addition to being perfectly obvious from a mere reading of the foregoing Article IV, Section 21, the so-called issue of "departure" has been decided adversely to petitioners in two prior actions, namely, *Cadman Memorial Church v. Kenyon*, 306 N. Y. 151, 116 N. E. 2d 481, generally referred to as the *Cadman* case and in the case of *First Congregational Church, etc., et al. v. Evangelical and Reformed Church, et al.* (CCA 2d, 1963), 305 F. 2d 724, Certiorari Denied February 18, 1963, herein referred to as the *Mayfair case*. As previously stated counsel for petitioners was granted leave to and did file a brief *amicus curiae* in this Court in the latter mentioned case.

There is no basis for the statements in the petition herein for a writ (page 8) that the *Cadman* case did not decide the issue of *departure* "on the merits," merely because the *Cadman* case also decided other issues which involved certain funds. The *Cadman* case was a class action brought on behalf of all Congregational churches. The opinion of the Court of Appeals of New York (306 N. Y. 151, 116 N. E. 2d 481) states in part:

"According to its complaint the plaintiff is proceeding upon the theory that the proposed United Church of Christ is and will be so alien and different in structure and polity that fundamental congregational usage and practice will be wholly lost and destroyed."

After reviewing the *facts* touching on such issue of *departure*, the Court of Appeals found the plaintiffs' claim to be without merit and stated:

> "Every possible assurance is given that each member church will continue to possess the same freedom of faith and manner of worship as heretofore enjoyed—that there will be no interference nor abridgment of congregational usage and practice. In short, there is no power and none is claimed by which the General Council can compel or intends to compel the plaintiff Cadman or any other nonassenting church to join the Union unwillingly or impose upon them a change of faith or doctrine. Union depends on voluntary action freely taken by independent autonomous churches. If any doubt remains, it seems abundantly clear from this record that the very nature of Congregationalism, surviving as it has the vicissitudes of time for nearly four hundred years, assures the integrity of the individual Congregational Christian Church, its faith and independence. Under these circumstances no ecclesiastical question is presented (cf. Watson v. Jones, 13 Wall [U. S.] 679)."

The opinion of the Court of Appeals of New York then took up a discussion of other issues involving certain funds and after disposing of such issues, the Court of Appeals' opinion concludes:

> "On this record, the *proof having established* that the Basis of Union is voluntary and *in no way interferes with Congregational faith* or *manner of worship*, and the plaintiffs having failed to establish any direct or beneficial interest in and to the unrestricted funds of the General Council, its various boards, agencies and instrumentalities, and having failed to show that any such general funds are to be used for other than authorized charter purposes, *the complaint was properly dismissed on the merits*."

It is perfectly apparent that the issue of departure was considered on its merits and as the Court of Appeals of New York specifically stated: "* * * the complaint was properly dismissed *on the merits.*"

There likewise is no basis for the statements in the petition herein for a writ (pages 9 *et seq.*) that the *Mayfair* case (305 F. 2d 724) did not consider the issue of departure or did not hold that the *Cadman* case decided such issue "on the merits," and that such decision was *res judicata* and binding on the issue of departure in Mayfair. In reference to the issue of departure, the Second Circuit Court of Appeals stated:

> "* * * The questions of the validity of the General Council's action and its effect on individual congregations were legal issues in which *all* the present plaintiffs have the same interest as the *Cadman* plaintiffs and to which the differences in their various situations are irrelevant; and thus as to these questions *the decree is binding on all.*" (p. 729.)

Upon this case being filed in May, 1961 in the Court of Common Pleas of Lucas County, Ohio, service was made upon one of plaintiffs as statutory agent for respondent and an injunction issued ex parte. Plaintiffs in the trial court unsuccessfully objected to respondent securing time to file an answer; moved to strike the answer when filed because they claimed that respondent was unauthorized to retain an attorney to represent it; and filed a series of other motions and pleadings which delayed the filing of a reply and a disposition of the case upon the merits. Plaintiffs were finally forced to file a reply in the spring of 1962.

The issues being thus made up, respondent filed its Motion for Summary Judgment, which after extended hearings and arguments was granted by the trial court in September of 1962. The complete records in the *Mayfair*

and *Cadman* cases, together with numerous affidavits and copies of relevant documents, including the constitutions of respondent and the United Church of Christ, were in evidence before the trial court.

The trial court in its Journal Entry (Appendix B to petition, pages 21 *et seq.*) made certain findings of fact and conclusions of law. One finding was that respondent's congregation had voted 154 for and 55 against approving the constitution of the United Church of Christ. One conclusion of law was that such a vote was, in all respects, legal and proper and did not involve any change whatsoever in the constitution of respondent church. Another conclusion of law was that the procedure employed by respondent to secure such a vote was, in all respects, legal and proper; and a still further conclusion was that respondent had taken all lawful and proper procedure and was a local church of the United Church of Christ. The findings and conclusions further were that the so-called issue of "departure" had been litigated at length in the *Mayfair* case and *Cadman* case and the decisions in those cases were *res judicata* and *estoppel* by judgment to further trials on such issues.

On appeal to the Court of Appeals for Lucas County, Ohio appellants listed three assignments of error, none of them making any reference to the constitution of the United States. The first of such three assignments of error was:

> "The trial court erred in granting defendant's motion for summary judgment because of genuine issues of material fact as to Article II of defendant's Constitution."

The second and third assignments of error in the Court of Appeals were identical, except that they respectively referred to Article VIII and Article IV of defendant's constitution.

After the Court of Appeals made a docket entry sustaining the trial court, and before the Journal Entry was filed, appellants in the Court of Appeals filed a motion for rehearing, excerpts from which are set forth above (page 3) claiming that the Court of Appeals "erroneously construed the Ohio law relating to the construction and interpretation of contracts" and that appellants understood that the Court of Appeals had concluded "that the construction and interpretation of the constitutions of the defendant and the United Church of Christ was merely a matter of law for the court."

As shown by the Journal Entry in the Court of Appeals (Appendix C, page 23 of petition) the motion for rehearing was overruled and judgment of the trial court affirmed.

The Court of Appeals was the final court that passed on the issues below, as the Supreme Court of Ohio overruled the motion to certify the record because the case was not one of general public interest (Appendix D, page 29 of petition), and granted respondent's motion to dismiss the appeal "for the reason that no debatable constitutional question herein exists." (Appendix A, page 19 of petition.) 175 Ohio St. 264.

ARGUMENT AND LAW.

(a) The question sought to be reviewed was not timely or properly raised or expressly passed upon in the courts below.

The alleged question presented, set forth on page 3 of the petition, was not raised, argued or briefed in the trial court or the Court of Appeals. The first mention of such "asserted" question was in the last assignment of errors listed in appellants' brief in the Supreme Court of Ohio.

Petitioners now claim the federal question presented is whether the application of *res judicata* herein is a denial of due process of law. Page 5 of the petition states the question was raised in the trial court by paragraph 12 of plaintiffs' petition in that court (Appendix E, page 35 of petition). Such paragraph makes no reference to the question of *res judicata*. That issue was first raised in respondent's answer filed August 21, 1961 about three months after plaintiffs instituted suit. While such answer is not included as an appendix to the petition in this case, excerpts thereof setting forth such defenses of *res judicata* and *estoppel* by judgment, as well as excerpts from respondent's motion for summary judgment filed March 13, 1962, appear as part of the appendix to Mr. Swartzbaugh's brief as amicus curiae in 1962 Cause Number 705, the *Mayfair* case.

There are no pleadings, proceedings or briefs in the trial court wherein any claims are made that the application of *res judicata* involves any constitutional question. The Journal Entry, including the findings and conclusions of the trial court (Appendix B, page 21 of petition) makes no reference to any federal question; nor did petitioners ever file any exceptions to the findings and conclusions set forth in the journal entry of the trial court suggesting any federal question.

It is likewise true that petitioner's assignment of errors and brief, including the appendix thereto, in the Court of Appeals of Lucas County, Ohio, make no reference or citations to any provisions of the constitution of the United States or of the State of Ohio.

On page 5 of their petition, the claim is made that a constitutional question was raised by the assignment of errors in the Court of Appeals and argued by brief. That is not correct. As previously stated there were only three assignments of error in that court and they referred only to the constitution of respondent church.

Furthermore, as demonstrated by excerpts (quoted *ante*, page 3) from the appellants' motion for rehearing in the Court of Appeals, petitioners conceded that the Court of Appeals actually decided the case as a question of Ohio law involving the interpretation of certain written documents.

The first mention of any alleged federal question was in the last assignment of errors set forth in appellants' brief in the Supreme Court of Ohio. Respondent as appellee, filed in the Supreme Court of Ohio, a motion to dismiss the appeal therein on the grounds that no constitutional question was presented and that motion was granted. (175 Ohio St. 264, Appendix A, page 19, petition.)

Appellants' sixty-one page brief in the Supreme Court of Ohio devoted about three and one-half pages (pages 57-60 inclusive) to a discussion of the so-called constitutional question. Respondent's sixty-nine page brief in the Supreme Court of Ohio referred to such question only on page 64 thereof. Respondent's brief stated in part:

> "* * * we do want to point out that no constitutional issue is properly before this Court, as none was assigned as error in the Court of Appeals, or briefed or argued in the Courts below."

"A recent statement of this long established rule appears in *State, ex rel., v. Shannon, Presiding Judge*, 170 Ohio St. 393 (1960) where in *Per Curiam* opinion the Court said:

"'It is an established rule of long standing in this state that a constitutional question, either in a civil or criminal action, cannot be raised in the Supreme Court unless it was presented and urged in the courts below. *Hoffman v. Staley*, 92 Ohio St., 505, 112 N. E., 1084; *Cuthbertson v. State*, 106 Ohio St., 658, 140 N. E., 941; *Zimmerman v. Morris Plan Bank of Cleveland*, 113 Ohio St., 703, 150 N. E., 920 and *Village of Clarington v. Althar*, 122 Ohio St. 608, 174 N. E., 251.'"

"The necessity of first presenting to the Court of Appeals *any* issue that is to be considered by the Supreme Court is pointed out in *State of Ohio v. Wirick*, 81 O. S. 343. The third syllabus of that case holds:

"'Objections which do not affect jurisdiction of the subject matter, and which were not made in the intermediate court of appellate jurisdiction will not be entertained in this Court.'"

No extended citation of authority is needed in support of the well established rule and practice of this Court that any alleged federal question sought to be reviewed must be timely or properly raised or expressly passed on in the courts below. This Court in the case of *Edelman v. State of California*, 344 U. S. 357 (1952) said:

"It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law. Hulbert v. Chicago, 202 US 275, 50 L ed 1026, 26 S Ct 617 (1906); Mutual Lifes Ins. Co. v. McGrew, 188 US 291, 308, 47 L ed 480, 484, 23 S Ct 375, 63 LRA 33 (1903). Noncompliance with such local law

can thus be an adequate state ground for a decision below * * *." (pp. 358-359.)

We submit that on the record before this Court, it is obvious that the question stated in the petition was not timely or properly raised or expressly passed on by the courts below, and that there is no ground for granting a writ of certiorari in this case.

(b) The judgment below rests on an adequate non-federal basis.

The dispute herein only involves the meaning and interpretation of certain written documents, namely the constitution of the United Church of Christ and the constitution of respondent church. No change was made in the name, or the constitution or by-laws of respondent church, and such finding was made by the trial court. The claim that the autonomy of a local church is destroyed by the constitution of the United Church of Christ is completely refuted by merely reading Article IV, Section 21 of the Constitution of the United Church of Christ, set forth in full at pages 5-6 *ante*. It is perfectly apparent that the judgment below would be eminently proper without any reference whatever to any prior litigation.

Even after the judgment in the trial court was affirmed by the Court of Appeals of Lucas County, Ohio, plaintiffs-appellants filed a motion for a rehearing, asserting that the Court of Appeals had in fact concluded that the *Cadman* and *Mayfair* cases "were neither applicable as res judicata nor as collateral estoppel," and that the Court of Appeals had merely passed upon the construction and interpretation of two written documents as "a matter of law for the courts." Petitioners' own contention in that court on rehearing was that such court's decision was on an entirely non-federal basis. It is obvious that there is an

adequate non-federal basis for the judgment below and no federal question was ever raised in the trial court, or the Court of Appeals.

The fact that no federal question was seasonably raised before the Supreme Court of Ohio (*State ex rel., v. Shannon, Presiding Judge, ante* page 13) is in itself an adequate state ground for the decision below. *Edelman v. State of California, ante* page 13.

In *Stembridge v. State of Georgia*, 343 U. S. 541 (1957) this Court said:

> "At this stage, the Supreme Court of Georgia could have denied certiorari on adequate state grounds. Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a non-federal ground, this Court will not take jurisdiction to review the judgment. Hedgebeth v. North Carolina, 334 U. S. 806, 92 L. ed 1739, 68 S. Ct. 1185; Woods v. Nierstheimer, 328 U. S. 211, 90 L. ed 1177, 66 S. Ct. 996; White v. Ragen, 324 U. S. 760, 89 L. ed 1348, 65 S. Ct. 978; McGoldrick v. Gulf Oil Corp. 309 U. S. 2, 84 L. ed 537, 60 S. Ct. 375; Woolsey v. Best, 299 U. S. 1, 81 L. ed 3, 57 S. Ct. 2; Lynch v. New York, 293 U. S. 52, 79 L. ed 191, 55 S. Ct. 16; Cuyahoga River Power Co. v. Northern Realty Co., 244 U. S. 300, 303, 304, 61 L. ed 1153, 1157, 1158, 37 S. Ct. 643; Adams v. Russell, 229 U. S. 353, 358-362, 57 L. ed 1224, 1226-1228, 33 S. Ct. 846; Allen v. Arguimbau, 198 U. S. 149, 154, 155, 49 L. ed 990, 993, 25 S. Ct. 622; Johnson v. Risk, 137 U. S. 300, 307, 34 L. ed 683, 686, 11 S. Ct. 111; Klinger v. Missouri (U. S.) 13 Wall 257, 263, 20 L. ed 635, 637.
>
> "* * * We are without jurisdiction when the question of the existence of an adequate state ground is debatable. Bachtel v. Wilson, 204 U. S. 36, 51 L. ed 357, 27 S. Ct. 243.

"The petition for certiorari was improvidently granted, and the case is dismissed."

For such additional reasons, there is no ground for granting a writ of certiorari herein.

(c) The case does not present any substantial federal question.

Although petitioners did not timely or properly raise any federal question, and the judgment below certainly rests on adequate non-federal basis, even assuming that the question posed by petitioners had been timely or properly raised, and passed upon by the Ohio courts, the petition herein would not have presented any substantial federal question.

The *Mayfair* case, in which counsel for petitioners filed a brief amicus curiae, was brought by a number of congregational churches, their ministers and individual members on behalf of themselves and all other congregational churches, ministers and members, as a class action to determine the rights of all. The petitioners and respondent in this case were adequately represented in such litigation that was carried to this court. The named plaintiffs in the *Mayfair* case included the Mayfair Congregational Church of Toledo, Ohio, its minister and one of its members. The Mayfair Church is located only a few miles from the respondent church and the *Mayfair* litigation was, of course, of interest and well known to petitioners and respondent.

In the *Mayfair* litigation the issue of "departure" was for the second time thoroughly gone into and held to be without merit, a determination that would seem to be obvious in view of the clear provision of Article IV, Section 21 of the constitution of the United Church of Christ, quoted at pages 5-6 *ante*.

A judgment in a class action is, of course, a bar to all members of the class represented. In *Smith v. Swormstedt*, 57 U. S. (16 How.) 288, which was a class action seeking determination of the rights of superannuated ministers of the Methodist Episcopal Church South in the United States, the court states at pages 301-2:

> "For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and *the decree binds all of them* the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

Hartford Life Insurance Co. v. Ibs, 237 U. S. 662 was an action by a beneficiary on a policy of life insurance. There had been a prior class action in another state by certain members and beneficiaries against the insurance company, although neither the plaintiff in the *Ibs* case nor her decedent were named parties in such prior litigation. This court held that the former class action was decisive as to all issues therein raised, which were again raised in the later litigation, stating:

> "It is said, however, that even if the decree determining the status and use to be made of the Mortuary Fund, was binding on members and beneficiaries, it could not be offered in evidence in a suit on a policy of insurance, since the cause of action and the thing adjudged in the two cases was different—one involving the status of the Fund and the rights of members therein, while the present case related to the right of a beneficiary to recover on a policy and the power of the Company to declare a forfeiture. But the defendant's contention that the policy had lapsed * * *

raised an issue as to the right of the Insurance Company to levy the assessment. On that issue the Connecticut decree was admissible since it adjudged that the Company had the right to make advances to pay claims and could subsequently collect the amount of such claim by an assessment levied as in the present case. *Its right so to do having been determined by a court of competent jurisdiction the decree was binding between the parties and their privies in any subsequent case in which the same right was directly or collaterally involved.* (Emphasis supplied.) For *even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remain unmodified.* (Court's emphasis.) *Southern P. R. C. v. United States*, 168 U. S. 48, 49."

In *Watson v. Jones*, 80 U. S. 679, this Court stated:

"The law knows no hearsay, and is committed to the support of no dogma, the establishment of no sect."

In *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, this Court pointed out that no constitutional doctrine is more firmly established than that there exists "a spirit of freedom for religious organizations, an independence from secular control, or, in short, power to decide for themselves free from state interference, matters of church government as well as those of faith and doctrine."

We respectfully submit that this case could not present any substantial federal question, even assuming that the same had been timely or properly raised, and passed upon in the Ohio courts, and that for such further and additional reason that there is no ground for granting a writ of certiorari herein.

CONCLUSION.

For the reasons stated above, the petition herein should be denied.

Respectfully submitted,

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